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Supreme Court of the United States

OCTOBER TERM, 1924

No. 311

CLAY COOKE, *Petitioner*,

vs.

THE UNITED STATES OF AMERICA, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF ON BEHALF OF PETITIONER

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INDEX

CASES CITED

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Statement of the Case

On the 26th day of February, 1923, the Clerk of the District Court of the United States for the Northern District of Texas, Fort Worth Division, issued a writ of attachment directed to the Marshal of said District commanding him to attach the bodies of Clay Cooke, an attorney, and J. L. Walker, his client, and to have them before the District Court of the United States, at the city of Fort Worth, Texas, *instanter*, then and there to show cause why they should not be punished for criminal contempt (R.

p. 4). Said writ did not disclose what the accusation was, nor at said time was there on file or on any record of said court any charge against petitioner.

The Marshal executed said writ, as shown by his return, as follows:

> "Received this writ the 26th day of February, 1923, and executed the same on the 26th day of February, 1923, by attaching the bodies of Clay Cooke and J. L. Walker and taking them before the Honorable James C. Wilson, U. S. District Judge, at Fort Worth, Texas, who ordered them to jail for thirty days." (R. p. 4.)

There was no affidavit for contempt filed, nor any other authentic charge, nor was there served on petitioner any notice of the nature of the complaint against him. There appears, however, in the record as sent up by the clerk what was evidently intended to be the charge against petitioner (R. p. 1-4).

This document, which is styled "Statement of Facts" (R. p. 1), purports to charge petitioner and his client, J. L. Walker, with contempt of court in writing and causing to be delivered to the Judge of the Court, in Chambers, a letter copied in said purported charge as follows:

"Fort Worth, Texas, February 15, 1923.

Honorable James C. Wilson,
Judge U. S. District Court,
Fort Worth, Texas.

Dear Sir:

In Re No. 985, W. W. Wilkinson, Trustee, v. J. L. Walker

In Re No. 986, W. W. Wilkinson v. Mass. Bonding Co. et al

In Re No. 266-Equity, W. W. Wilkinson, Trustee, v. J. L. Walker

In Re No. 69-Equity, Southwestern Telegraph & Telephone Co. v. J. L. Walker

In Re No. 1001-In Bankruptcy, Walker Grain Company

Referring to the above matters pending in the District Court of the United States for the Northern District of Texas, at Fort Worth, I beg, personally as a lawyer interested in the cause of justice and fairness in the trial of all litigated matters, and as a friend of the Judge of this Court, to suggest that the only order that I will consent to your Honor's entering in any of the above mentioned matters now pending in your Honor's Court is an order certifying your Honor's disqualification on the ground of prejudice and bias to try said matters.

You, having, however, proceeded to enter judgment in the petition for review of the action of the referee on the summary orders against the Farmers & Mechanics National Bank, and J. L. Walker and Mrs. M. M. Walker, you, of course, would have to pass upon the motion for a new trial in those matters, and also having tried 984, W. W. Wilkinson, Trustee, v. J. L. Walker, you will, of course, have to pass upon the motion for a new trial

in said cause.

I do not like to take the steps necessary to enforce the foregoing disqualification, which to my mind as a lawyer and an honest man is apparent.

Therefore, in the interest of friendship and in the interest of fairness, I suggest that the only honorable thing for your Honor to do in the above styled matters is to note your Honor's disqualification, or, your Honor's qualification having been questioned, to exchange places and permit some judge in whom the defendant and counsel feel more confidence to try these particular matters.

Prior to the trial of cause No. 984, which has just concluded, I had believed that your Honor was big enough and broad enough to overcome the personal prejudice against the defendant Walker, which I knew to exist, but I find that in this hope I was mistaken; also, my client desired the privilege of laying the whole facts before your Honor in an endeavor to overcome the effect of the slanders that have been filed in your Honor's Court against him personally and which have been whispered in your Honor's ears against him, and in proof of which not one scintilla of evidence exists in any record ever made in your Honor's Court.

My hopes in this respect having been rudely shattered, I am now appealing purely to your Honor's dignity as a judge and sense of fairness as a man to do as in this letter requested, and please indicate to me at the earliest moment your Honor's pleasure with respect to the matters herein presented, so that further steps may be avoided.

With very great respect, I beg to remain,

Yours most truly,

(Sgd.) CLAY COOKE." (R. p. 2.)

There was a series of cases in which the said Walker was interested pending in the United States Court at Fort Worth, growing out of certain bankruptcy proceedings and certain proceedings in bankruptcy involving the recovery of certain alleged preferences, etc. (R. p. 15), one of which, namely Wilkinson as Trustee of the Walker Grain Company, bankrupt, brought against said Walker as defendant, sought to recover $85,000.00 alleged to have been paid by the bankrupt upon certain promissory notes (R. p. 5), upon which Walker was surety, which, according to the Court "the Jury after deliberating earnestly for the larger part of two days" returned a verdict for the plaintiff in the sum of $56,484.65 (R. p. 6). The Court, in its statement of facts, had "submitted the dceision of the case entirely to the jury without comment or expression of opinion by the Court, but on the other hand, *specially instructing the jury to disregard any opinion the jury might feel the Court entertained as to the facts*, and to reach their own conclusion and verdict *irrespective of the Court's opinion, if any had been expressed.*" (R. p. 6.) The jury in this case rendered its verdict on February 15, 1923.

According to the statement of facts prepared by the Judge, "on the following day at the hour of 11:15 A. M.," while the court was in a short recess from the trial of another case foreign to this controversy, he charges that "the said J. L. Walker and his attorney of record, Clay Cooke, Esquire, were guilty of misbehavior in the presence of the Court

or so near thereto as to obstruct the administration of justice by delivering by the hand of said J. L. Walker to the Judge of this Court, Judge James C. Wilson," in the Judge's Chambers, the letter hereinbefore referred to (R. p. 6).

In the Court's statement of facts it appears "the said Clay Cooke and said J. L. Walker both being present at said time and place" (R. p. 6). This evidently means that the said Cooke was technically present for the reason that just prior thereto the Court in its statement says that the letter was delivered "by the hand of said J. L. Walker" (R. p. 6). That the petitioner was not present when the letter was delivered to him by Mr. Walker for delivery appears from the statement made in open Court. (R. p. 14.)

Eleven days after the letter was written and ten days after its receipt, according to the Judge's statement, the Judge, on, to-wit February 26, 1923, ordered "that an *attachment immediately issue* for the said J. L. Walker and Clay Cooke, and that the Marshal of this Court *produce them instanter* before this Court" (R. p. 4), which, according to the Marshal's return, was executed on said day (R. p. 4), the petitioners being brought into Court at 11:00 A. M., at which time, the Court announced that he would call the contempt matter and makes this significant statement:

> "I have requested Judge J. M. McCormick of Dallas to be present and act as a friend of

> the Court in this proceeding, and have also requested the District Attorney, it being in its nature a criminal matter, to act." (R. p. 9.)

Up to this time, there is nothing in the record to show that defendants were advised of the charge. Petitioner advised the Court that he received his first notice of the proceeding about an hour previous and tried to arrange for counsel, and asked to be allowed the benefit of counsel and an opportunity to consult them, which was denied by the Court (R. p. 9-10). He then requested time to prepare and file an answer, which was also denied by the Court (R. p. 10-11), the Judge stating:

> "Unless you desire now to state that you have some defense you care to file and present, and indicate what that defense is to this charge, then I shall direct that this proceeding go forward. * * * Now if you have any defense that is pertinent to this order, state what it is." (R. p. 11.)

Under these most trying circumstances, and confronting the Court without counsel, the petitioner renewed his request that he be permitted to have the benefit of counsel and an opportunity to properly answer the charges to show a lack of intention of disrespect to the Court, that the letter was written as a friend of the Judge to avoid placing upon the record an affidavit of bias and prejudice, but he was repeatedly interrupted and prohibited by the Court from even dictating to the Court

stenographer such statement except in a manner agreeable to the Court (R. p. 11-15).

As illustrative of these interruptions by the Court, the following among a number of others appears in the record:

> "Mr. Clay Cooke: I am now stating my good faith.
>
> Judge Wilson: I mean this, that the Court is not permitting it stated—you may if you regard that as proper, you may state it in your bill of exceptions in concluding the record.
>
> Mr. Clay Cooke: That affiant had heretofore been on friendly relations with said Judge James C. Wilson—
>
> Judge Wilson: That is a matter that is wholly immaterial here, it don't make any difference how friendly.
>
> Mr. Clay Cooke: I am stating my good faith in writing the letter. And affiant believed in writing said letter that he would relieve the said Judge of the embarrassment of filing the necessary statutory affidavits of disqualification, and if said letter—
>
> Judge Wilson: Now the Court is not caring anything about your suggesting the disqualification of the Court; that is your right before these important trials, but you did not avail yourself of that privilege. You understood as a lawyer how to proceed in order to suggest the disqualification of the Judge.
>
> Mr. Clay Cooke: I am going to state why I did not proceed—
>
> Judge Wilson: That does not constitute any defense to this contempt charge.
>
> Mr. Clay Cooke: Can I put that in about writing the letter? Can I put that in later?

Judge Wilson: You may." (R. pp. 12-13.)

* * * "That affiant never made public to any one whatsoever the contents of said letter and did not intend the contents for any one except the Judge of this Court, and for the friendly purpose of relieving affiant any embarrassment in the trial of cases then pending in the Court, and if possible to relieve His Honor of any embarrassment incident to the trial of said cases, which would necessarily arise in view of the condition of the mind of affiant's client and of other parties involved in the litigation. The purpose of the letter was most friendly. That affiant has always upheld the dignity of our Courts and has upheld in all previous controversies, the fairness of the Judge of this Court, and has had numerous strong arguments—

Mr. McCormick: We object to the innuendo that this Court has been the matter of discussion.

Mr. Clay Cooke: We would like to add here that affiant says he has been unable to consult with counsel; that if any one is guilty of contempt it is affiant solely, and that his client, J. L. Walker, is not apprised of the contents of said letter, more than that affiant would endeavor to get the Court, by a private, personal communication, to exchange with some other judge to try the matters in which affiant's client was involved.

That affiant now here requests the privilege of a delay of not less than one day, and three days if possible, in which to prepare and present to this Court evidence of extenuating circumstances; evidence of a lack of any intention to commit a contempt of this Court; evidence of the good standing and record of affiant at the bar of Texas and other Courts

and at the bar of other states during the past fifteen years, and other evidence proper to be heard in a trial of this character, where affiant's standing and reputation and where his practice is involved, and his right to practice in a matter of this kind, and affiant respectfully prays for not less than one day's time and three days if possible, to present his defense, and also to present the extenuating circumstances which might appeal to the conscience of the Court, in case the Court can not be convinced from other evidence that no contempt was intended and none was committed.

Also affiant desires to investigate and his counsel to investigate the law for presentation to the Court, as to whether a personal private letter delivered to the Judge, setting up affiant's position with regard to litigation, and his client's position with regard to litigation, constitutes in law a contempt of the Court." (R. pp. 13, 14.)

Thereupon for the first time, the order of arrest was read to petitioner at the direction of the Court by the District Attorney (R. p. 14), whereupon petitioner moved the Court as follows:

"Mr. Zweifel (to the defendants, Cooke and Walker): Stand up.

Mr. Clay Cooke: To which the defendants move first, as they have moved, for a postponement and for time within which to plead and for time within which to employ counsel, as heretofore requested.

Judge Wilson: The motion is overruled." (R. p. 14.)

* * * * * *

"Defendant excepts to the action of the Court as shown by the foregoing record in refusing to permit them any time to consult counsel or to plead in answer to said rule to show cause; that had defendants been permitted to consult counsel and answer or plead to said writ, defendants would have answered and did thereafter answer as shown by their answer filed in said cause." (R. p. 15.)

The Court thereupon of its own motion, stated that it would have inserted in the record the pleadings in two suits in which said Walker was a party, whereupon the petitioner requested that there also be inserted in the record the evidence in one of the cases, which the Court promptly stated would be excluded, to which action the petitioner excepted (R. p. 15).

While the basis of the Court's charge of contempt against petitioner was the letter written eleven days prior to the date of citation and the hearing, it is apparent from the record that other reasons actuated the Judge in ordering the instanter order of arrest and the judgment of contempt, as appears from the following:

"And I have some more things I should like to remind you gentlemen of, your conduct and course as litigant and as an attorney of this Court, in many respects, has been reprehensible. You have filled your pleadings with scandalous charges against trusted officials of this Court. You have charged that the Referee in Bankruptcy, the attorneys for the petitioning creditors and the Trustee in Bankruptcy en-

tered into a corrupt conspiracy to do many unlawful things all to deprive you, J. L. Walker, of your rights, in this Court. And not only that, but while the jury were deliberating in cause No. 984, and though in charge of the Marshal of this Court, you, both of you being a party to it, employed a private detective to follow and shadow them with a view of reporting to you any corrupt conduct on their part; and you, J. L. Walker, after the jury had rendered its verdict of fifty-six thousand dollars against you, you employ this same detective, whose sworn statement I hold in my hand, to follow the foreman of the jury, Mr. E. G. Thomas, an honorable and respected citizen of Tarrant County, stating that you expected him to meet some one and be paid off, in other words, to receive bribe money for his verdict in said cause. And not only that, but you gave this same private detective to understand, that another one of the jurors, an honorable citizen of Parker County, had been improperly approached and influenced as a juror in this case—

Mr. J. L. Walker: Your Honor, pardon me, but I would like to state that J. L. Walker did but what he is in position to prove, and I have it in my pocket now—

Mr. Marshal, cause this man to desist.

Mr. J. L. Walker: I beg your pardon, I thought I had the right to speak now.

Judge Wilson: No, you haven't got a right. Your time to reply is passed.

In view of all this, it is not surprising that you men would deliver this letter to the Court with the utterly false statement in it that this Court had permitted himself to be improperly influenced and whispered to *and whispered to* by interested parties against a litigant in this

Court. It is a simple and easy matter to analyze the character of any man who is expecting every other man to act dishonestly and corruptly.

Your whole course, as I say, has been contemptible, not only in this matter, and it is not surprising that you delivered this letter to the Court and is surprising that you did not state more in the letter, and of course you are in contempt, if you are not, you have your remedy, and you, J. L. Walker, I sentence to the Tarrant County jail for thirty days and the payment of a five hundred dollar fine—" (R. pp. 15, 16.)

Upon delivering sentence against each of the defendants of thirty days in jail and a fine of $500.00, the Court was interrupted by the special counsel retained by the Court who directed his attention to the fact that the Court was exceeding his statutory right which limited the punishment to fine or imprisonment. Whereupon the Judge ordered that each be committed to jail for thirty days (R. p. 16).

Petitioner noted an appeal and the Court granted it, but fixed the appeal bond at $1,000.00 (R. p. 16). The Court declined to accept a bond to release the defendants, and ordered them to be taken to jail, where they were not permitted to communicate with counsel or friends until some friends on their own initiative perfected the writ of error and gave bond for petitioner's release (R. pp. 17, 18). The Court held that the only condition on

which he would release the petitioner on bond was that they should first perfect an appeal. The Court stated: "If they perfect this appeal, I might release them from jail—show that they are going to appeal it and do it in a hurry." (R. p. 17.)

Upon the release of petitioner from jail he immediately employed counsel, prepared and filed his verified answer, supported by affidavits, in the nature both of an answer and motion in arrest of judgment and for a new trial, and presented same to the District Judge for action thereon, but said Judge refused to act thereon one way or the other (R. p. 17). Petitioner then presented his petition, assignments of error, and bond for writ of error, March 19, 1923, which the Court approved and ordered substituted for the appeal papers approved and filed by petitioner's friends while he was held in jail incommunicado (R. p. 18). The assignments of error were prepared with reference to this verified answer or motion for new trial and in arrest of judgment (R. pp. 21-32).

Petitioner procured a stipulation (R. p. 49) signed by his counsel, by the U. S. District Attorney, and by J. M. McCormick, Esq., special counsel engaged by the Court to assist in the prosecution (R. p. 9) as to the contents of the record on appeal, which stipulation included, as a part of the record, said answer and motion, being item (e) thereof (R. p. 49), and petitioner also included same in his praecipe for preparation of the record (R. p. 50). After

these papers were filed, without the knowledge or consent of petitioner or his counsel, the Court directed the clerk to omit the same from the record on appeal (R. pp. 47, 44).

Petitioner filed in the Circuit Court of Appeals an application for certiorari to perfect the record by requiring the clerk to include said instrument, as required by stipulation of counsel and praecipe before it was altered (R. pp. 54-50). This motion was denied by the Circuit Court of Appeals April 5, 1923 (R. p. 50).

The Honorable Circuit Court of Appeals for the Fifth Circuit, by opinion rendered December 26th, 1923, reversed the sentence against petitioner's client, but affirmed the sentence against petitioner (R. pp. 51-57). The Court in its opinion holds that petitioner was entitled to a fair hearing on the question of his guilt or innocence of the charge, and further holds that petitioner may not have received the character of hearing to which he was unquestionably entitled, but bases its affirmance of the decree upon the assumption that a fair and legal hearing would not have benefited petitioner.

The Court of Appeals, however, holds in its opinion that this leave to file an answer after conviction, could not take the place of the duty of the Court to permit same and hear the defense before convicting the defendant, but declined to accord petitioner the benefit of this just and salutary principle, because said Court believed that a trial would not have benefited petitioner.

ASSIGNMENTS OF ERROR

First

The Court erred in denying petitioner due process of law, in violation of the provisions of the Constitution, in that:

(a) He was arrested without warrant of law, no affidavit, or other authenticated charge being filed against him.

(b) He was denied the assistance of counsel for his defense.

(c) He was not informed of the nature and cause of the accusation against him.

(d) He was not permitted to plead thereto.

(e) He was denied the right to produce witnesses in his favor.

(f) He was not confronted with any evidence or witnesses against him.

(g) He was incarcerated incommunicado and prevented from presenting, before appeal, his application for a new trial, motion in arrest of judgment, or consulting counsel with respect to said proceedings.

Second

The Court erred in denying and refusing petitioner the right of counsel and time to consult counsel with respect to the charge brought against

them, because the same is a right guaranteed by the Constitution and laws of the United States passed in pursuance thereof.

Third

The Court erred in entering the said judgment and sentence, in that the proceedings to effect the same, were in violation of Art. VI of the Amendments to the Constitution, in that the petitioner (a) was denied the right of a public trial; (b) was not informed of the nature of the charge against him; (c) was confronted with no witnesses against him; (d) was denied process for obtaining witnesses in his favor; (e) and was denied the assistance of counsel for his defense.

Fourth

The Court erred in holding that the writing of said letter and the delivery of same was a direct contempt upon which petitioner was entitled to no trial and no hearing.

Fifth

The Court erred in convicting petitioner of a contempt for writing the said letter, when the same had been delivered ten days prior to his citation therefor, and the record of said Court shows that petitioner was punished for other and different offenses, to-wit, the shadowing of a juror, because said charges were brought immediately after the

Court obtained evidence of the shadowing of said juror, and not upon the writing of said letter, and because the Court shows in its sentence that it is the offense of shadowing said juror for which petitioner was punished, and all of the evidence shows that this was the offense in the mind of the Court in imposing said punishment.

Sixth

The Court erred in denying petitioner his inalienable right at Common Law to purge himself of the charge of contempt by his oath.

Seventh

The Court erred in holding that there was anything in the said letter contained that could obstruct the administration of justice.

Eighth

No lawful trial was had and no lawful procedure was followed in obtaining said conviction.

Ninth

The trial Court erred in striking from the record, after writ of error to the Circuit Court of Appeals had been perfected, the answer of the petitioner filed therein, and in excluding the same from the record transmitted to the Appellate Court.

Tenth

The Circuit Court of Appeals erred in denying petitioner's motion for certiorari to bring up the complete record, including defendant's answer to the charge and the trial Court erred in striking this instrument from the record after appeal perfected, because:

(a) Same constituted good defense to said charge and should have been considered.

(b) Same was a part of the record on appeal, had been stipulated and designated as such and was arbitrarily stricken by the Court therefrom after appeal perfected without knowledge of the petitioner or his counsel.

Eleventh

The Court erred in hailing petitioner before the bar of said Court upon an instanter writ of attachment to show cause why he should not be committed for contempt of court in the writing of the letter set forth in said charge, and then, upon being presented at the bar of said Court, in refusing to permit him to show cause why he should not be committed, as shown by the record in said cause, the Court having summarily upon his presentation at the bar of said Court committed him to jail for contempt of Court, without a hearing, without the privilege of consulting counsel and setting up and showing his defense thereto.

ARGUMENT AND AUTHORITIES

Petitioner's conviction was obtained without due process of law.

(a) He was sentenced without any affidavit or other authentic charge being brought against him, or any notice of the offense charged.

The first signed or filed instrument of any character is the writ of attachment (p. 4), signed by the clerk, directing the Marshal to immediately seize the person of petitioner and bring him instanter before the bar of the Court "to show cause why he should not be punished for criminal contempt." There was no intimation of what the alleged contempt consisted. The only apparent authority of the clerk to issue this writ is the unsigned, unfiled, and unentered typewritten matter, styled "Statement of Facts" (p. 1). Evidently this was dictated by the Judge in Chambers and left with the clerk as the basis of the writ of attachment. It was not signed, filed, nor passed in open Court, and to this date does not appear on the minutes or other record of said Court. It is the only foundation upon which the whole proceeding rests. Is it sufficient basis upon which a warrant may issue and petitioner's person be seized and thrown into confinement?

Art. IV of our Bill of Rights provides: "The right of the people to be secure in their persons * * * against unreasonable seizure shall not be violated,

and no warrants shall issue but upon probable cause, supported by oath or affirmation, etc."

No oath or affirmation supports this warrant. No order passed in open court supports it. No signed instrument or charge of any character supports it. The purported charge does not pretend to be the act of the Court, but is merely a statement of alleged facts dictated by the Judge, not acting as a Court. Yet the warrant issues thereon, petitioner's person is seized thereon, and the whole proceeding rests thereon. At the very inception, this provision of our Bill of Rights is violated.

Phillips S. & T. Co. v. Amalgamated Ass'n., 208 Fed. 335.

Sona v. Aluminum Castings Co., 214 Fed. 936.

(b) Even this purported charge states no offense against the laws of the United States.

Art. 1245, U. S. Comp. Stat. R. S. 725, March 1, 1911, C. 231, S 268; 36 St. 1163, provides that "contempts committed in the presence of the Court or so near thereto as to obstruct the administration of justice may be punished in conformity to the usages at law and in equity now prevailing." The purported charge does not state by any positive averment that the writing of said letter obstructed the administration of justice. It merely purports to set forth the "views" of the judge of the court that same was impertinence and insult

to the judge of the court; it does not by positive averment charge defendant with any criminal intent to obstruct the administration of justice, but merely expresses the "view" of the judge that such was the intent and purpose (p. 1-4). In criminal prosecutions it is essential that the charge brought against the accused by positive averment state an offense against the law. Whatever "*view*" the judge might privately hold as to the purpose and intent in writing the letter, or his "*view*" with respect to the motives prompting same cannot constitute an offense against the laws, because no citizen can be held to answer for the "views" of another. He must have done something which violates an express prohibition of the law and he must have done it with criminal intent. Before he can lawfully be seized and convicted, the nature of the accusation must be set forth and brought home to him in positive averments. If everything in the purported charge were admitted to be true, it would merely mean that the Judge held certain private "views" as to certain private, confidential acts of the defendant, and these views might or might not be justified by the facts.

Exparte Hudgins, 249 U. S. 378.
Exparte Craig, 274 Fed. 185.

(c) Petitioner was not informed of the nature and cause of the accusation.

Even should this instrument be sufficient to charge an offense, no notice of it was ever given to peti-

tioner. No copy accompanied the warrant as required by law; it was not of record in the Court; it was never passed in open Court, nor entered on the minutes. Art. IV of the Bill of Rights provides that *"In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation."* After petitioner's futile efforts to gain a little time to investigate the charge (pp. 9-12), it was read by the District Attorney (p. 14), and thereupon petitioner was immediately sentenced to thirty days in jail (p. 15). The information to which the accused is entitled is reasonable information, that is, such as would permit him to investigate and answer the accusation. In this instance after the reading of the charge to him he was immediately sentenced without even being arraigned, required, or permitted to plead thereto. This is not such notice as the Constitution intends, nor would it be sanctioned even in the case of the darkest offense or the most vicious criminal. It would seem that a reputable practicing attorney, whose only offense seems to be that, in an effort to obtain an unbiased Judge to try certain pending litigations of a civil nature, without embarrassment to himself or the Judge, he excited the Judge's wrath, should be accorded at least that same measure of Justice that those charged with heinous crimes are accorded.

Act of August 18, 1894, C. 301, Sec. 1, 28 St. 416, requires that a certified copy of the complaint be attached to every warrant of arrest, and that

the officer executing same shall take his prisoner before the nearest commissioner for a hearing and taking of bail for trial.

This statute was in no respect complied with. The petitioner was arrested on a warrant that neither charged an offense nor contained a certified copy of any charge, and was immediately committed to jail for 30 days.

Sona v. Aluminum Castings Co., 214 Fed. 936.
Gompers v. Buck Stove & Range Co., 221 U. S. 418.
Exparte Robinson, 86 U. S. 205.
Windsor v. McVeigh, 93 U. S. 277.
Galpin v. Page, 85 U. S. 959
In re *Holt*, 55 N. J. L. 384.

(d) Petitioner was denied the assistance of counsel for his defense.

No notice was given petitioner of the charge, though the trial Judge consumed ten days after receiving the letter in which it appears he engaged the services of a special prosecutor from another city, formulated the charge, prepared for the prosecution; then, after such careful preparation, a U. S. Marshal is sent out to bring petitioner under arrest instanter before the Court, where he is denied all reasonable opportunity to consult counsel, or to obtain the assistance of counsel for his defense.

Our Bill of Rights, Art. VI, further provides: "In *all* criminal prosecutions, the accused shall enjoy the right to have the *assistance* of counsel for his defense."

The fact that this is a criminal prosecution and that defendant was denied the assistance of counsel for his defense cannot be and is not denied. The Honorable Circuit Court of Appeals excuses in its opinion this infraction of a fundamental right by the assertion that the accused was an attorney himself. The Constitution does not say that in the event the accused is not a practicing attorney, he shall have the right to the assistance of counsel. There is no such dangerous exception in that document. Besides, the accused was in custody, the Marshal's hand was on him. He had more need of counsel than one of another profession charged with crime, because in other instances the accused would have been admitted to bail, his trial set, and he would have been given time to prepare for his defense; also in ordinary accusations, the accused is supposed to have the protection of the Court, whose first duty is to see that he gets a fair and impartial trial according to the due course of the law of the land. Here, the Court was the prosecuting witness, judge, jury, and executioner, and it is apparent that he was in such a frame of mind that he could not even permit the defendant to state his good faith in writing the letter. If ever accused needed, or was entitled to the benefits of the assistance of counsel for his defense, this was

one, if for no other reason than to endeavor to mollify the apparent injured pride of the presiding Judge to the extent that he might accord the defendant some slight measure of justice in the hearing.

The Honorable Circuit Court of Appeals also states that defendant had the assistance of his law partner, Mr. Dedmon. This is contrary to the facts. The record shows that after the Court had ordered the Marshal to take the defendants to jail (p. 17) Mr. Dedmon appeared for the first time, unknown to defendants and without even the opportunity of consultation with them, and while they were held in jail without even the privilege of consultation, prepared the appeal papers which were subsequently ordered out of the record and other appeal papers prepared by defendant's counsel after his release from jail substituted therefor. (Rec. p. 18.)

Besides it is the *assistance* of counsel that the Constitution guarantees. The right of counsel, even if granted, without the right of consultation is a barren and fruitless right. The arrest, the alleged hearing, the conviction and the incarceration of defendant all occurred in a very short space of time in the forenoon, and defendant during all of said time was in the custody of the Marshal or before the bar of the Court in custody, with no opportunity either to employ or consult with counsel. It is hard to believe that any Judge, in whose oath-

bound custody is committed the protection of these sacred fundamental and inherent rights, could so far forget their meaning or his duty as to try to construe the facts or action herein as a compliance with this provision of the Constitution.

What was the cause for the sudden hurry to get defendant in jail? Had not the trial Judge consumed eleven days after the commission of the alleged offense before he even brought the charge? If with the assistance of the District Attorney, he had not sufficient counsel to prosecute defendant, but had to engage special counsel from another city and bring them over, can anyone say that defendant was not entitled to at least one day or one counsel, or one hour of consultation?

But did any counsel appear for defendant? The record discloses that after petitioner's request for time to employ and consult counsel had been peremptorily overruled, after he was denied the right to plead to the alleged charge, after he had been sentenced to 30 days in jail, the following occurred:

> "Judge Wilson: Take these respondents to jail, Mr. Marshal.
>
> "Mr. McCormick: If they are going to take the full 60 days on the matter.
>
> "Judge Wilson: No, there is not going to be any 60 days, the higher court is going to pass upon this matter at once." (Rec. p. 17.)

And as the Marshal was taking defendant to jail he stated:

"We want to make bond." (Rec. p. 17.)

For the first time then it appears that Mr. Dedmon appeared and while petitioner was incarcerated in jail and with Judge Slay prepared the petition for writ of error and the bond therefor to obtain petitioner's release as a friendly act, without consultation with defendant. (Rec. p. 18.) Neither of these attorneys attended the alleged hearing or knew anything about the proceeding, nor did petitioner have the slightest opportunity to consult with them. This cannot be called, with any degree of fairness, that assistance of counsel intended by the framers of the Constitution. It is more nearly similar to the acts of the British Crown complained of as one of the reasons justifying our Declaration of Independence.

(e) Defendant was not allowed to plead to said charge, and the common law right to purge himself by his oath was denied him.

The statement of the case, supra, shows that defendant was even denied the privilege of dictating a motion for time to employ and consult counsel, investigate the charge and plead thereto. Immediately upon the overruling of said motion he is ordered to jail for thirty days. He was not arraigned or requested or required to plead to said charge, even orally; indeed the record shows that he was in truth and in fact convicted before the warrant was ever issued and there was never any

intention on the part of the trial Judge to permit him even to assert a defense. Because when he attempts to state his good faith, although the charge has not at that time even been read, the Judge stops him and states that he will not even permit his good faith to be stated, but that it might be incorporated in the record in concluding the bill of exceptions. In other words, the Judge announces the defendant's conviction before the charge is even read, and offers to incorporate whatever defense the defendant might have in the bill of exceptions in concluding the record (R. p. 14). It is not understood, in this state of the record, why the Judge did not in the first instance have the warrant to direct the Marshal to seize the person of defendant and hold him in jail for thirty days. Why go through the utter farce of bringing him into Court; no right or privilege was accorded him there.

It is apparent that the trial Judge did not desire to hear any defense, excuse, or extenuation whatever, and the Honorable Circuit Court of Appeals well says: "The permission of the Court given him to incorporate his defense in the record could not take the place of a hearing of his defense before the tribunal before which he was being tried." Yet that Court in affirming the sentence against petitioner, retracts its own principle thus laid down by saying: "A further and more deliberate hearing would have been of no benefit to him."

Is the conferring of benefits or the infliction of injuries any concern of Justice? Justice is or should be administered by Courts without regard to benefits conferred or injuries inflicted, but solely because it is Justice. As said by Seneca:

> "He who decides a matter without hearing both sides, though he may have decided right, has not done Justice,"

and this is spoken of by Blackstone as a "*rule of natural reason.*"

But the Honorable Circuit Court of Appeals says that though a just and fair hearing, such as petitioner was unquestionably entitled to, was not granted, even if it had been it would not have benefited him. It would at least have permitted the defendant while serving his thirty days in jail at the instance of that Government, which in time of war and stress demands and receives his loyalty and devotion, to feel that in return therefor the same Government is equally concerned to guard and protect his liberty and his lawful rights. A man convicted after a fair trial can with good grace accept and endure his punishment, *but a man punished without the semblance of a fair trial, by an angry Judge, in the heat of passion, for what is misunderstood by him to be a mere personal affront,* is injured by the procedure no matter how guilty he may be. It might well be said that a trial would not benefit a robber, murderer, or rapist, but this fact does not excuse mob violence, and any

Court in the land would be quick to reverse a conviction of a penal offense on this character of a hearing. Should not our Courts be equally as careful in protecting the fundamental right to liberty and upholding the simplest requirements of Justice when the offense charged is such that the trial Judge necessarily is personally interested and more than ever likely to deal unjustly.

Chief Justice Taft's language in the very recent case of *Craig v. Hecht*, 260 U. S. 714, is illuminating. He says:

> "The Federal statute concerning contempts, as construed by this Court in prior cases, vests in the trial judge the jurisdiction to decide whether a publication is obstructive or defamatory only. The delicacy there is in the judge deciding whether an attack on his own official action is mere criticism or real obstruction, and the possibility that impulse may incline his view to personal vindication are manifest. But the law gives the person convicted of contempt in such case the right to have the whole questions on *facts and law* reviewed by three judges of the Circuit Court of Appeals, who have had no part in the proceedings, and if not successful in that Court to apply to this Court for an opportunity for a similar review here."

How then can the appellate Court or the Supreme Court review both questions of law and questions of fact, when no lawful procedure is followed, the evidence is suppressed by the trial Court, the defendant's mouth closed, and his answer stricken from the record?

There is no better argument directed against the record in this cause than to quote the language of a great and good lawyer to whom it was submitted, and who wrote:

> "The pretense of following the formalities of the law had the manner of insincerity, and it would seem that the part of frankness and candor wou'd have put in operation the Lettre de Cachet by which men were consigned to the Bastile when the subject could not reason why."

To make a pretense of following the forms of the law, but denying the substance of all rights, is more oppressive and unjust than not to pretend to follow them at all. Injustice always masquerades in the habiliments of Justice as a lie ever clothes itself in a half truth.

Petitioner's conviction is upheld by the Circuit Court of Appeals solely upon his admission of having written the letter in his attempted motion for time to employ counsel and prepare his answer, although he was never allowed even to complete this statement and show his good faith in writing the letter. However, such statement as he was permitted to make, taken in connection with the plain and obvious meaning of the letter, relieved of the individual "views" of the trial Judge, completely exonerates him of any wilful contempt. Let us in fairness examine the facts under which this conviction was obtained.

Petitioner is representing a client against whom the trial Judge harbored great personal prejudice and bias, if not actual malice (R. p. 16), which needs no better proof than his sentence of the client in this case. That such prejudice and bias exists is not even denied in the charge; it is tacitly admitted. Vast property rights are involved. In the trials already had the Judge openly and publicly admitted that it existed and that it was based "upon what he had heard" concerning the client. Counsel feeling that no free American citizen ought to be compelled to submit his property rights to a Judge, who admittedly was so biased and prejudiced from "what he had heard" concerning the client that he "questioned his own qualification" (using the Judge's own public language), and feeling that his own sworn duty to his client required him to take some steps to assure that fair and impartial trial to which every citizen is entitled, dictates with the friendliest intentions, a letter to the Judge, seeking an exchange of Judges in future cases, and giving as his reasons only those things which the Judge himself had publicly admitted to exist. In this he expressly reserves to the Judge the right freely to pass upon any unfinished matters, the disposition of which had been entered upon. Ten days later about 10 A. M. a U. S. Marshal walks into his office and places him under arrest without any notice of the charge against him. On the way to the Court he meets his law partner returning who informs him that the charge is the writing of such

a letter. He is presented instanter before the Judge, who has consumed eleven days preparing for the prosecution and arranging for a special prosecutor, designated by the Judge as a friend of the Court (R. p. 9), where he merely asks a reasonable time, even one day, to investigate the charge, consult counsel and plead thereto, all of which fair and reasonable requests are denied and he is immediately incarcerated where he is held incommunicado and not permitted to consult with counsel to perfect his appeal. As a good, loyal citizen he is expected to serve thirty days and come out of jail with feelings of high respect for the tribunal that sent him there. This character of procedure will not accomplish the purpose for which all punishments are designed. We can see also that such practice is not calculated to invite or obtain for Courts that public respect which they ought to have, and without which they cannot function properly.

Petitioner's sworn duty was to see that his client had a fair and impartial trial. In view of the many proceedings pending it was manifestly impossible at any stated period to disqualify the Judge in undisposed of cases, except at a time when some unfinished matter in another case might be pending before him. However, as to these unfinished matters the Judge's right to proceed therewith to completion was expressly acknowledged in the letter, and nothing therein contained could influence any man of ordinary firmness of character, and it is not possible to fairly say that the writer had any

such intention; at least no such intention is conclusively shown by the letter itself, even if it could be found to be correctly set forth in the charge. We believe that we can safely assert that counsel would not have been in contempt had he asked the Judge to voluntarily disqualify in these undisposed of motions, or permit same to be passed upon by some other Judge. The letter discloses, however, that the writer intended to assure the Judge that his full right to pass upon these undisposed of motions would not be questioned by affidavit or otherwise.

The only objection to the letter apparently urged in the purported charge is the statement of the defendant's former opinion that the Judge was big enough and broad enough to overcome the bias and prejudice admittedly existing, and the conclusion that he was mistaken therein. This is not a contempt. It is merely the statement of a truth, which this record clearly discloses. It is an unfortunate situation that a lawyer may, with flattery and praise, seek to and actually influence judicial action, but he cannot speak the truth with candor without being sent to jail. This is not as it should be. As has been said by a great Judge:

> "An independent and unterrified bar is the best assurance of an uncorrupt and incorruptible judiciary."

Exparte Robinson, 86 U. S. 205.
Hovey v. Elliott, 167 U. S. 409.

McVeigh v. U. S., 78 U. S. 80.
Windsor v. McVeigh, 93 U. S. 277.
Galpin v. Page, 85 U. S. 959.
In re *Pittman*, 1 Curt. (U. S.) 186.

(f) Petitioner was convicted without being confronted by any witnesses or evidence against him, and there is no evidence of guilt in the record to sustain the conviction.

Our Constitution provides:

> "In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

This is a criminal prosecution resulting in deprivation of liberty. That much must be conceded. Each and all of the protective provisions of the Constitution were violated in the procedure. Petitioner was not confronted with any witnesses against him, he was not allowed process for obtaining witnesses in his favor, he was denied the assistance of counsel for his defense, he was deprived of his liberty without any process worthy of the definition of "due process of law," as given by Mr. Webster in the Dartmouth College case (4 Wheat. 518):

> "A law which hears before it condemns, which proceeds upon inquiry and renders judg-

ment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

(g) The record on appeal was wrongfully altered after the appeal was perfected by arbitrarily striking out defendant's answer and motion in arrest of judgment, and for a new trial, and the Court's refusal to act on same was a refusal to perfrom the duties required of him by law, and his striking said papers from the record on appeal after appeal was perfected was an invasion of the province and jurisdiction of Appellate Courts, and deprived petitioner of substantial legal rights.

At the time of the pretended hearing, which in truth and in fact was no hearing at all, and when petitioner was prohibited by the Court from showing his good faith and absence of any intention to commit an offense, he specifically asked leave of the Court to later put in the record his defenses in full. The bill of exception shows:

"Mr. Clay Cooke: I am now stating my good faith.

Judge Wilson: I mean this, that the Court is not permitting it stated—you may if you regard that as proper, you may state it in your bill of exceptions in concluding the record" * * * (p. 12).

"Mr. Clay Cooke: Can I put that in about writing the letter? Can I put that in later?

Judge Wilson: You may." * * *

> "Mr. Clay Cooke: We will ask permission to add this to the bill, what we want to state and what we are not allowed to state here, we can add our defenses in full." (p. 13.)

It will be noted that immediately after this permission was given, petitioner was hustled off to jail without counsel, and held until friends perfected a writ of error (p. 18). Immediately upon his release from jail he prepared his answer in full in accordance with this leave granted in open court, in the nature of a motion in arrest of judgment and for a new trial supported by affidavits. This was duly filed and presented to the District Judge for action prior to the filing of the real authorized petition for writ of error, hereinafter mentioned. The Court refused to act on said motion, the record showing:

> "Defendants thereafter on the 9th day of March, 1923, presented to the Court their answer and motion in arrest of judgment and for a new trial and to reform the findings of fact, *filed in said cause under leave of the Court*, and same was, on to-wit, the 9th day of March, 1923, presented in open Court to the Honorable James C. Wilson, Judge of said Court, for his action thereon. The Court having received and examined said answer and motion, declined to grant same or to make any order thereon, to which action of the Court the defendants duly excepted." (p. 17.)

Thereafter petitioner filed his petition and assignments on writ of error, which were ordered sub-

stituted for the unauthorized appeal papers filed during petitioner's incarceration (p. 18). Petitioner thereupon procured a stipulation signed by his counsel and the United States District Attorney, and J. M. McCormick, Esq., special prosecutor, stipulating that this answer and motion in arrest of judgment and for a new trial should constitute a part of the record on appeal (pp. 49-50), this instrument being item "e" of said stipulation and was included as item "e" in petitioner's praecipe. The United States District Judge, according to the statement of the Clerk, struck this item "e" out of said praecipe and stipulation and directed the Clerk to omit same from the record on appeal (pp. 44-47). Petitioner filed a motion in the Honorable Circuit Court of Appeals for the Fifth Circuit, asking a writ of certiorari, to perfect the record by including this document (p. 50), which was overruled. While granting of a motion for a new trial is discretionary, as a rule, in the Federal Court, the Court has no right to refuse to exercise such discretion and to refuse to make any order whatever upon such motion.

Mattox v. U. S., 146 U. S. 140.
Pugh v. Bluff City Excursion Co., 177 Fed. 399, 101 C. C. A. 403.

The Court could not lawfully, while holding petitioner in jail, impell him into the upper Court by an unauthorized writ of error without even the privilege of filing his defense later as granted by

the Court in open Court. His refusal to act upon such motion filed in strict accordance with leave granted in open Court, was not only an abuse of discretion but was an arbitrary refusal to perform a positive duty imposed by law.

(h) A Sentence imposed for an offense not charged is void. 16 C. J. 1303.

The Court would receive no answer and would permit no evidence to be offered as to the alleged offense charged, pretending to find defendant's guilt from his own intuitive knowledge. It will be observed that after the Court had refused defendant the right to employ counsel, or the right to purge himself of said offense, he thereupon proceeded immediately to sentence petitioner in the following language:

> "And I have some more things I should like to remind you gentlemen of, your conduct and course as litigant and as attorney of this Court, in many respects, has been reprehensible. You have filled your pleadings with scandalous charges against trusted officials of this Court. You have charged that the Referee in Bankruptcy, the attorneys for the petitioning creditors and the Trustee in Bankruptcy entered into a corrupt conspiracy to do many unlawful things all to deprive you, J. L. Walker, of your rights, in this Court. And not only that, but while the jury were deliberating in cause No. 984, and though in charge of the Marshal of this Court, you, both of you being a party to it, employed a private detective to follow and shadow them with a view of report-

ing to you any corrupt conduct on their part; and you, J. L. Walker, after the jury had rendered its verdict of fifty-six thousand dollars against you, you employed this same detective, whose sworn statement I hold in my hand, to follow the foreman of the jury, Mr. E. G. Thomas, an honorable and respected citizen of Tarrant County, stating that you expected him to meet some one and be paid off, in other words, to receive bribe money for his verdict in the cause. And not only that, but you gave this same private detective to understand, that another one of the jurors, an honorable citizen of Parker County, had been improperly approached and influenced in this case. * * *

Mr. J. L. Walker: Your Honor, pardon me, but I would like to state there is nothing that J. L. Walker did but what he is in position to prove, and I have it in my pocket now—

Judge Wilson: Mr. Marshal, cause this man to desist.

Mr. J. L. Walker: I beg your pardon, I thought I had the right to speak now.

Judge Wilson: You haven't got a right. Your time to reply is passed. (Rec. pp. 15-16.)

In view of all this, it is not surprising that you men would deliver this letter to the Court with the utterly false statements in it that this Court had permitted himself to be improperly influenced and whispered to *and whispered to* by interested parties against a litigant in this Court. It is a simple and easy matter to analyze the character of any man who is expecting every other man to act dishonestly and corruptly.

Your whole course, as I say, has been contemptible, not only in this matter, and it is not surprising that you delivered this letter to the Court and is surprising that you did not state

more in the letter, and of course you are in contempt, if you are not, you have your remedy, and you, J. L. Walker, I sentence to the Tarrant County jail for thirty days and the payment of a five hundred dollar fine—

Mr. McCormick: I doubt whether Your Honor has the authority to assess both fine and imprisonment. The statute says you may punish by 'fine or imprisonment.' I believe I would suggest that you visit such fine as you see fit, or such imprisonment, but not both.

Judge Wilson: I assess a punishment of thirty days against each of these respondents." (R. p. 16.)

This statement of the trial Court shows that it was these other matters, his entire knowledge of which was gained by hearsay, that caused the whole proceeding and this is shown conclusively by the aforesaid motion in arrest of judgment and for a new trial, and the affidavits attached thereto, and gives some explanation of the action of the Court in not desiring this instrument to be before the Appellate tribunal. However, the record such as the trial Court graciously permits to be brought up, shows conclusively that it was for these other matters that the Court instituted the proceedings and prosecuted them, and that the letter itself is a mere pretense and was utilized because the Court desired to inflict punishment without permitting a public hearing or trial.

First, the letter was written eleven days before the contempt proceedings were instituted, but the

contempt proceedings were instituted immediately after the Court had procured affidavit of the private detective employed by petitioner to watch one member of the jury. Petitioner employed this detective to watch the juror on account of obvious misconduct by said juror, and that he was fully justified is shown by said motion. The statement that the jury was in charge of a Marshal is wholly untrue. The jury was not in charge of a Marshal, but for the entire ten days separated and went their respective ways was shown by the excluded answer. Second, it will be noticed that the Court directs that the pleadings of petitioner in which the Court says that the scandalous charges against the Referee and Trustee in Bankruptcy, and the attorney for the petitioning creditors is contained, shall be included in the record. The bill of exception shows:

> "The Court: The Court will have inserted in the record the pleadings of the defendant, J. L. Walker, in case No. 984 and also the charge of the Court in that case, and will also insert the pleadings of the respondent, J. L. Walker, prepared by the respondent, Clay Cooke, in cause in Equity No. 266, W. W. Wilkinson, Trustee, v. J. L. Walker.
>
> Mr. Clay Cooke: I would like also to insert in the record the evidence in the case of W. W. Wilkinson, Trustee, v. J. L. Walker, No. 984, at Law, the Q. and A. report of the testimony in that case.
>
> The Court: That will be excluded." (R. p. 15.)

The record shows that the sentence was pronounced because petitioner objected by pleadings to certain alleged illegal methods of administering the bankrupt act in said Court. Why cannot such methods when questioned stand the light of publicity or a public trial? It is apparent from the foregoing statements from the record that the writing of said letter is not what the Court had in mind in bringing the charge, else why did he not bring it when the letter was written?

It is manifest that it was these other matters for which he brought the charge, else why did he bring it as soon as he got knowledge by hearsay of the other matters? Else, why is his entire sentence taken up in a scandalous and untruthful denunciation of petitioner, while the Marshal holds the petitioner's mouth closed?

The motion in arrest of judgment and for a new trial show conclusively why the Court made these allegations in his sentence and shows that they were utterly unfounded in truth and in fact. Hence this answer, motion in arrest of judgment and for a new trial, must needs be excluded from the record on appeal lest this Honorable Court, as said by his Honor, Chief Justice Taft, should review both law and facts and see plainly the real purpose and animus directing this proceeding against petitioner.

There is no single principle so well settled in criminal jurisprudence, or which appeals more

strongly to the innate sense of justice in every man, than the principle that the accused is entitled to know definitely the charge against him, and is to be tried and sentenced on no other. The entire proceedings lead to the inevitable conclusion that the Court desired to punish defendants for shadowing Thomas, and from questioning the operations of the Trustee and Referee in Bankruptcy, and at the same time prevent any record being made which this Court could review.

He received the letter ten days before he moved to punish the alleged "obstruction of justice," but he moved immediately after he got the detective's affidavit.

DISCUSSION OF AUTHORITIES

How poorly does the record in this case comport with the principles laid down by a contemporary Court of the same judicial system, in *Phillips S. & T. Co. v. Amalgamated Assn.*, 208 Fed. 335, wherein the proper procedure is outlined in the following language:

> "The power to punish for contempt is to be used sparingly and with great caution and deliberation. The purpose in invoking the exercise of such power is the enforcement of the law and lawful orders and the punishment of acts of disobedience. A Court thus called upon to enforce the law may itself keep well within its limits.
>
> "It is not a party to the proceeding. In punishing for contempt the judge acts imper-

> sonally, and has no interest or concern other than the law should be obeyed and enforced. *To justify punishment, whether of a remedial or punitive character, the charge against the accused and the course of procedure must meet legal requirements, and the proof must conform to the settled rules of evidence.*"

If the learned judge just quoted is right, then the procedure in this case is wrong. In the case at bar the Judge made himself a party to the proceedings by engaging special counsel to represent the Court in the prosecution.

The Sixth Circuit Court of Appeals said in *Sona v. Aluminum Castings Co.*, 214 Fed. 936:

> "Respondents were unquestionably entitled to be informed of the charge made against them, and so clearly and definitely as not only to show prima facie a case against them, but that when arraigned they might know what answer to make, and to enable them to prepare their defense."

And this Honorable Court stated in *Gompers v. Buck Stove & Range Co.*, 221 U. S. 418:

> "Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt, the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself."

If these announced principles are correct, then the procedure herein is wrong.

This Court said in the *Gompers* case:

> "The complainants made each of the defendants a witness for the company, and, as such, each was required to testify against himself —a thing that most likely would not have been done or suffered by either party had they regarded this as a proceeding at law for criminal contempt, becaues the provision of the Constitution that 'No person shall be compelled in any criminal case to be a witness against himself,' is applicable not only to crimes, but also to quasi-criminal and penal proceedings."

If this Honorable Court was right in saying that in contempt proceedings Constitutional limitations are to be observed, then the procedure invoked herein to deprive petitioner of his liberty is unquestionably a violation of the Constitution.

If this proceeding is consonant with the dignity, decorum and orderly administration of justice in Federal Courts, then Constitutional guaranties are like a German Treaty, a mere scrap of paper, to be trampled upon by the Courts, its constituted guardians, whenever the wounded vanity or injured pride of the sitting Judge may dispose him to exercise harsh, arbitrary, and unbridled authority.

The evil of not requiring such proceeding to be conducted with decorum and in an orderly and judicial manner was never more apparent than in the instant case. There being no formal charge filed or presented against the defendants, the Court re-

fusing a formal trial, in remanding them to jail assails them upon matters entirely different from the writing of the letter, matters clearly not within the knowledge of the Court, nor committed in his presence, and upon which he heard no evidence whatever, and the harshness of the sentence is plainly based on these other considerations.

That the Constitutional right of trial by jury does not exist in contempts committed in the face of the Court, or contempts so near thereto as to obstruct the administration of justice, does not signify that the other protective provisions of the Constitution can all be ignored. The right of jury trial in such instances did not exist at common law, for the very simple reason that at common law, the right of the accused to purge himself of contempt by his oath was held inviolate, and the facts set forth in his oath were not allowed to be disputed, but were taken as true; therefore, at common law no issue of fact could ever arise in a contempt case. But this very reasoning impels the conclusion that the other guaranties of the Constitution do apply to such criminal prosecutions. To deny the right of trial by jury because at common law the defendant's answer could not be controverted and no issue of fact be raised thereon, and then deny the defendant the right to answer is to stultify both the common law and sound reason and violate the Constitution.

It is not liberty to say that a King cannot imprison without trial, and then say a Judge can. To

the man in jail it is a distinction without a difference.

This Court in the case of *Ex Parte Robinson*, 86 U. S. 205; 22 L. Ed. 505, granted a writ of mandamus to the Judge of the District Court for the Western District of Arkansas, requiring him to restore the petitioner's name to the roll of attorneys. His name was stricken from the roll by the judge for an alleged contempt committed in open Court. He had been cited by the Judge by rule to show cause why he should not be punished for contempt in connection with an alleged evasion of process of the grand jury by a witness. He appeared in Court in response to the rule, whereupon the Court informed him that his answer to the rule must be in writing; he stated that the rule did not so state, and thereupon it was ordered by the Court amended to require him to answer in writing and under oath, whereupon petitioner answered: "I shall answer nothing," which the Judge asserted was in an angry defiant, and disrespectful manner and tone, and that he regarded "the words and the tone, and the manner in which they were uttered as grossly and intentionally disrespectful, and as an expression of an intention to disobey and treat with contempt an order of the Court, and believing that the petitioner intended to intimidate him in the discharge of his duty, he felt it due to himself and his office to inflict summary and severe punishment upon the petitioner."

Mr. Justice Field in speaking for the Court said:

> "Before a judgment disbarring an attorney is entered, he should have notice of the grounds of complaint against him, and ample opportunity of explanation and defense. This is a rule of natural justice and should be equally followed when proceedings are taken to deprive him of his right to practice his profession, as when they are taken to reach his real or personal property. And such has been the general, if not uniform practice of the Courts of this country and of England. There may be cases, undoubtedly, of such gross and outrageous conduct in open Court on the part of an attorney, as to justify very summary proceedings for his suspension or removal from office; but even then he should be heard before he is condemned. The principle that there must be citation before hearing, and hearing or opportunity of being heard before judgment, is essential to the security of all private rights. Without its observance no one would be safe from oppression wherever power may be lodged."

Is a man's liberty of less value in the eyes of the Court than real or personal property, or the right to an office? If even in the case of gross and outrageous conduct in open court, he "should be heard" before he is condemned to lose an office, what can be said in defense of summary deprivation of liberty of person without any, much less "ample" opportunity of explanation and defense? This Court has well said "this is a rule of natural justice," just as it later said that "such judgment is not entitled to respect in any other tribunal." (93 U. S. 277.)

It cannot truthfully be said that the petitioner was afforded even a reasonable opportunity to be heard. He was arrested on an instanter writ of attachment, without notice of any charge against him, taken by the Marshal before the Court, where his efforts to gain a reasonable time to answer, the justice of which must be admitted by every fair minded man, and which was even consented to by the Government's counsel, was denied by the Court. Of what avail is summons or notice if the party is denied the benefit of notice? As said by Mr. Justice Field: "A denial to the party of the benefit of the notice is to deny that he is entitled to notice at all and the sham and deceptive proceeding had better be omitted altogether."

In the case of *Hovey v. Elliot*, 167 U. S. 409, this Court, speaking through Mr. Justice White, with respect to the power of the Courts of the District of Columbia to punish for contempt, says:

> "In the view we take of the case, even conceding that the statute does not limit their authority, and hence that the Courts of the District of Columbia, notwithstanding the statute are vested with those general powers to punish for contempt which have been usually exercised by Courts of equity without express statutory grant, a more fundamental question yet remains to be determined, that is, whether a Court, possessing plenary power to punish for contempt unlimited by statute, has the right to summon a defendant to answer, and then after obtaining jurisdiction by the summons, refuse to allow the party summoned to

answer or strike his answer from the files, suppress the testimony in his favor and condemn him without consideration thereof and without a hearing on the theory that he has been guilty of a contempt of Court. The mere statement of this proposition it would seem, in reason and conscience, to render imperative a negative answer.

"The fundamental conception of a Court of justice is condemnation only after hearing. To say that Courts have inherent power to deny all right to defend an action, and to render decrees without any hearing whatever is, in the very nature of things, to convert the Court exercising such authority, into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

The following language of Mr. Justice Swayne in *McVeigh v. U. S.*, 78 U. S. 80, though spoken with reference to the deprivation of property rights, is equally, if not more applicable to the deprivation of personal liberty, because the intent to throw every protection around the liberty of the citizen is far more evident in the Constitution than the intent to protect mere property rights. He says:

"The order in effect denied the respondent a hearing. It is alleged that he was in position of an alien enemy and could have no locus standi in that forum. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and our civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first prin-

ciples of the social compact and of the right administration of justice."

And Mr. Justice Field in *Windsor v. McVeigh*, 93 U. S. 277, referring to the above language, says:

"The principle stated in this terse language lies at the foundation of all well ordered systems of jurisprudence. Whenever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice recognized as such by the common intelligence and conscience of all nations. A sentence of a Court pronounced against a party without hearing him or giving him an opportunity to be heard is not a judicial determination of his rights and is not entitled to respect in any other tribunal. That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights is admitted. Until notice is given the Court has no jurisdiction in any case to proceed to judgment, whatever its authority may be by the law of its organization over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or charges made; it is a summons to him to appear and speak if he has anything to say why the judgment sought should not be rendered. A denial to a party of the benefit of the notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, 'Appear and you shall be heard,' and when he had appeared saying, 'Your appearance shall not be recognized and you shall not be heard!' It is difficult to speak of a

> decree thus rendered with moderation; it was in fact a mere arbitrary edict clothed in the form of a judicial sentence."

This noble language of Mr. Justice Field condemns the procedure in the instant case so completely that it seems to have been written for this case; and with reference to the above quoted language Mr. Justice White said in *Hovey v. Elliott*, supra:

> "This language but expresses the most elementary conception of the judicial function."

In *Galpin v. Page*, 85 U. S. 959, this Court said:

> "It is a rule as old as the law, and never more to be respected than now, that no one is to be personally bound until he has had his day in Court, by which is meant that he has been duly cited to appear, and has been afforded opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination. It is judicial usurpation and oppression, and can never be upheld where justice is justly administered."

In re *Holt*, 55 N. J. L. 384, the defendant was charged with a contempt consisting of a libelous publication against the Court, and an attachment was issued without affidavit or proof, the Court simply acting on its own motion, and thereupon the defendant was taken into custody and gave bail and thereupon moved to set aside the attachment as illegal and unproved, which the Court refused,

and proceeded without further proof to adjudge the defendant to pay a fine of $1,000 and costs, and be imprisoned until the payment thereof, and this being appealed,

Beasley, C. J., said:

> "The members of the Court were the accusers, witnesses and judges; they took no testimony but convicted the defendant from their own intuitive knowledge. It is not necessary to say that such a course had not, in any respect whatever, the least semblance of a proceeding in a court of law."

And in re *Pittman*, 1 Curt. (U. S.) 186, after speaking of the criminal nature of the process in contempt of court, Curtis, J., said:

> "The character of the proceeding should not be lost sight of, and especially it should not be so varied as to deprive the party proceeded against of any substantial right. Now one of the most important privileges accorded by law to one proceeded against for contempt *is the right to purge hmiself*, if he can, by his own oath. So rigid is the common law as to this that it does not allow the sworn answers of the respondent to be controverted, as to matter of fact by any other evidence."

The due administration of justice calls for the exercise of justice on the part of the Courts, and their dignity and public respect for their judgments demand that they proceed, especially where they are personally interested, with decorum, assuring the defendant every time honored right to present

whatever he or his counsel deem necessary or expedient in defense or mitigation of the offense charged. The harsh, arbitrary, and unseemly manner in which the Judge below proceeded in his endeavors to vindicate his own injured pride, denying the defendants all those rights which fair minded men would at once accord them, no matter how guilty, is far more detrimental and injurious to public respect for the Courts than any private letter counsel might write to a Judge in the heat of anger or feeling of outraged justice.

A Court cannot expect public respect for its decrees and judgments when it renders them in a manner that does violence to those fundamental principles of justice which are deeply imbedded in the Anglo-Saxon nature.

The Court would not permit counsel to explain even orally the circumstances under which the letter was written, and it is not even proven that the letter is correctly copied in the charge. Counsel did state that he dictated the letter with the friendly intention of relieving the Judge of embarrassment in the trial of the cases. It starts out with the assertion that it is written "as a friend to the Judge of the Court" (p. 3), and when counsel attempted to show that his intentions were friendly the Judge said, "it makes no difference how friendly" (R. p. 12). This is a cruel sentence which had better been left unsaid.

Lord Bacon has well said:

> "Those friends are weak and worthless that will not use the privilege of friendship in rebuking and admonishing their friends with freedom and confidence, as well of their errors as of their danger."

If this method of procedure is permitted, then there are no restrictions whatever on Federal Judges in the matter of punishment for contempt. The individual's liberty is as precarious as it was before Magna Charta was conceived.

The Appellate Courts have always exercised the right to review in contempt cases. Therefore, if this right to review is to be intelligently exercised by the higher Courts, there must be a trial conducted in accordance with the usual and customary methods and some record made, which an upper Court may review. To strike out of the record after the case has been concluded defendant's sworn answer, to refuse to hear evidence, to alter the record after appeal taken is not only to infringe defendant's rights but infringes the jurisdiction of the Court of Review.

Sec. 725 R. S. above cited states that "Contempts committed in the presence of the Court, or so near thereto as to obstruct the administration of justice, may be punished in conformity to the usages at law and in equity now prevailing." Congress recognizes that there are particular usages at law and in equity then prevailing with respect to the punish-

ment of such contempts. If the Judge could punish at his will Congress would not have mentioned the usages and customs whereby such causes are tried and punishment inflicted. It has never been held that the Court could summarily commit to prison, without charge or affidavit being filed, notice to the accused, an opportunity to purge himself by answer, and the introduction of evidence showing guilt.

The record conclusively shows that no fair opportunity was given the defendants to answer the charge; they were not allowed to plead, or consult counsel, although the Court had prepared for ten days for such prosecution, and employed a special prosecutor from Dallas; had set the stage as it were, and then sends out his Marshal, hales the defendants before him in custody without service of any notice of the charge upon them, and when they attempt to make even a verbal motion for time to plead are repeatedly interrupted and refused hearing, as witness the following:

> "Mr. Cooke: I am now stating my good faith.
>
> Judge Wilson: I mean this, that the Court is not permitting it stated—you may if you regard that is proper you may state it in your bill of exceptions in concluding the record." (R. p. 12.)

Then without permitting him to state his good faith he was hustled off to jail and held incommuncado, not permitted to telephone or consult

counsel, and when after release he files such sworn statement it is summarily stricken from the record.

> "Mr. Cooke:
>
> "That affiant had heretofore been on friendly relations with the said Judge James C. Wilson —Judge Wilson. That is a matter that is wholly immaterial here, it don't make any difference how friendly
>
> "Mr. Cooke:
>
> "I am stating my good faith in writing the letter. And affiant believed in writing said letter he would relieve the said Judge of embarrassment of filing the necessary statutory affidavits of disqualification, and if said letter—" (R. p. 12.)

Here affiant was intending to state, as he did later in his formal answer and motion in arrest of judgment, that if said letter contained any language to which the Judge did or could take any exception to it was due to the fact that affiant dictated same hurriedly and depended on his law partner, Mr. Dedmon, to read same after it was transcribed, and Mr. Dedmon being suddenly called to Austin, while affiant was absent laid the letter back on affiant's desk wihout reading it, and on Saturday morning just before nine o'clock affiant having an engagement in the District Court of Tarrant County, hurriedly sealed the letter, marked it personal, and handed it to Mr. Walker to deliver, affiant going immediately to the County Court House. (It must be noted that up to that time the defendant had not even seen said letter or the charge brought. It was

later read by the District Attorney), but here he was again interrupted:

"Mr. Cooke:
"I am going to state why I did not proceed—
"Judge Wilson:
"That does not constitute any defense to this contempt charge.
"Mr. Cooke:
"May I put in about writing the letter? May I put that in later?
"Judge Wilson:
"You may." (R. p. 12.)

After the incarceration incommunicado of the defendants they were not permitted to put it in later.

They filed their answer in full in connection with motion in arrest of judgment immediately after their release from custody; they also filed a stipulation of counsel that it might be included in the record before this Court. The only object of getting permission to file it later was that upon review this Honorable Court might be advised of the facts. After the appeal was perfected Judge Wilson scratched out of the stipulation of counsel (item (e) Record, p. 89) this answer and motion in arrest of judgment, and directed the clerk to omit it from the transcript to be filed in this Honorable Court.

We believe that a court attempting to try defendants against whom the Judge harbored such ill will as is exhibited in this proceeding is error in itself.

So far we have discussed the manner, form, and process by which the defendants were convicted

and sentenced. This we confidently assert was not that "due process of law" as understood under the Magna Charta, the Common Law, or our own Constitution. The sentence is a mere arbitrary edict without semblance of process of law.

The Offense Charged Does Not Constitute a Contempt

We desire, however, to consider whether the offense presumably charged constitutes a contempt of court at all under the restrictions placed by Congress on the power of Federal Courts.

Sec. 725, cited supra, provides:

> "The said Courts shall have power to impose and administer all necessary oaths, and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority. Provided that such power to punish contempts shall not be construed to extend to any cases, except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice."

A commitment for contempt is void for excess of power, the punishment being imposed for supposed perjury alone without reference to any circumstances or condition giving to it an obstructive effect. *Ex Parte Hudgins*, 249 U. S. 378.

The Circuit Court of Appeals for the Fifth Circuit in its opinion herein filed says:

> "While the statute provides a method for disqualifying a judge there could be no impropriety in addressing a judge in a proper way, to secure his voluntary retirement. The propriety of the letter depends upon the language used by the writer in addressing the judge. Language, appropriate in an affidavit of disqualification, might not be used with propriety in a private letter addressed to the Judge."

Is it possible that citizens are to be incarcerated in jail for thirty days upon a mere question of propriety of certain conduct? The wisest judge once said, "If thy brother offend, rebuke him." The Circuit Judge says now: "If thy brother on the bench offend, say nothing to him, lest it be considered an impropriety and you go to jail, but you may safely publish the facts to the world." Good men and honest may be as far apart as the poles on a question of propriety, but crime is based primarily upon criminal intent coupled with a criminal act.

The Honorable Circuit Court of Appeals further defines the offense, as relied upon by the Government as follows:

> "The part relied upon by plaintiff as constituting the contempt is the statement that prior to the trial of the case of his client, Walker, the writer had believed Judge Wilson big enough and broad enough to overcome the personal prejudice against his client, which he knew to exist, but that the trial of that case had convinced him that he had been mistaken in entertaining that belief; that his client had desired but had not obtained the privilege of

stating his answer to the slanders that been filed in Court, and whispered in the ears of the Judge Wilson against him; that the writer's hopes in this respect had been rudely shattered, and his confidence in Judge Wilson destroyed, and he was for that reason voluntarily appealing to Judge Wilson to voluntarily disqualify himself in the other cases of his client." Rec. p. 172.)

The learned Circuit Judge then proceeds:

> "At the time of the delivery of the letter, it appears from the recital that Judge Wilson was still to be called upon to hear the motion for a new trial in the case which had just been tried, and also certain bankruptcy proceedings, all of which had proceeded too far for an exchange of judges. The natural tendency of the letter was to destroy the calm and dispassionate consideration by Judge Wilson of the pending matters, which it was his duty to give."

The best answer to this reasoning is the very forceful language of Mr. Justice Holmes in the *Toledo Newspaper Co. Case*, 247 U. S. 402:

> "But a judge of the United States is expected to be a man of ordinary firmness of character, and I find it impossible to believe that such a judge could have found in anything that was printed even a tendency to prevent his performing his sworn duty."

In that case because the publications were made to the public generally and were likely "to arouse distrust and dislike for the Court," and prevent obedience to its decrees if rendered, it was deemed

sufficient to justify an information and fine, though after a formal trial.

In this case the Circuit Court of Appeals says because, to avoid publicity, counsel's position was communicated personally and privately, even unknown to his client, it would prevent one supposed to have dignity, poise and power requisite for a high judicial office, from calmly considering matters which the letter itself asknowledged his full right to pass upon, with every assurance that no steps would be taken to disqualify him therein.

The purported letter itself does not charge the Judge with anything which would or could be considered as a threat or intimidation. The letter asserts that it is written by the lawyer "as a friend of the judge of the court." *It relates entirely to other cases not even set for trial and in which the Judge was subsequently disqualified by affidavit to try the same* in strict accordance with the statute. Therefore, as he can enter no future orders in any of the cases made the subject of the letter, and evidently was not expected to do so, the letter could not "obstruct the administration of justice" in any of said causes. The Judge seems to infer that the letter being delivered (as he claims) during a ten minutes recess in the trial of another case, involving other parties, not in anywise connected either with the letter or defendants, it tended to obstruct the administration of justice in that case, but it could

hardly be suggested that the letter would so far upset the Judge as to prevent him fairly continuing the trial of an entirely foreign case then pending. To even think so is to ascribe to him a lack of self-control wholly incompatible with the dignity of his position. It is apparent from the letter that counsel never expected the Judge himself to pass upon any of the cases made the subject of the letter. The Judge asserts that it is his view that the letter was intended to "destroy the very fairness and impartiality" of the Judge acting on certain motions for rehearing in other cases which were not the subject of the letter.

The letter was not written about these at all, but to save any doubt, the letter asserted that no question as to his right to pass on these other matters was raised—in other words, his absolute right to pass upon them was conceded, and the letter merely referred to them so as to make it clear that his right to pass on same would not be raised, but on the other cases he would be disqualified in the statutory method unless he voluntarily exchanged benches or disqualified himself. Is there anything in this that could have the effect of intimidating the Judge or obstructing the administration of justice? To hold so would be to hold the Judge to be of very weak character indeed. Certainly no intention to intimidate could be imputed to the writer. He did not expect a favorable decision in any matter, nor did he ask or seek such. He merely sought his voluntary

disqualification in future matters, conceding his full right to act upon any pending or unfinished matters. Certainly it is not right for the Judge to suppress the evidence tendered by defendant as to his intent and motives and then conclusively presume motives far from his mind. It would be just as logical and just as fair to assume that these contempt proceedings were instituted to intimidate the lawyer from performing his sworn duty to his client to disqualify the Judge in the statutory method, as to assume that the letter was intended to intimidate the Judge. Certainly, the contempt proceedings did not have the effect of intimidating the lawyer, as disqualifying affidavits were immediately filed in all of the cases mentioned in the letter as soon as he was released from custody and it does not appear wherein the letter intimidated the Judge, as he promptly overruled all motions for rehearing on the other matters pending.

In the case of the*United States v. Craig*, 279 Fed. 900, the defendant was committed for writing a letter in which numerous serious charges against the Judge were made reflecting upon the handling of a receivership proceeding then pending. A fair trial was had on information filed by the District Attorney, defendant was represented by counsel and testified in his own behalf, but was convicted by the trial court and committed with the proviso that he might purge himself by filing an unqualified retraction of the alleged false charges with the clerk.

A Judge of the Circuit Court of Appeals for the Second Circuit in exparte *Craig* 274 Fed. 185, released the defendant on writ of habeas corpus, stating in his opinion as follows:

> "It will be observed that the entire letter refers to the denial of the application to appoint a co-receiver. The purport of the letter, taken as a whole, is a criticism of the District Judge who denied the application * * * * *In determining whether the language used was or was not a contempt regard must be had not merely to the very words used but to the surrounding circumstances in connection with which they were used.* In constructive contempt, such as is charged here, where the language used is not per se libelous, or is fully capable of innocent meaning, the intention of the offending party is a factor and may control. So where the publication complained of can have no tendency to prejudice the case, the publisher may not be found guilty of contempt. To vindicate the dignity of the court in compelling respect and obedience a judge may best demonstrate his title to respect by keeping within the confines of judicial obligation and not reaching out beyond his powers to visit punishment upon another official who acts within the limit of what he conceives to be his duty and who attempts whether inadvisably or not, to secure some means of keeping his employer advised by right of access rather than favor of access to papers and information concerning the railroad properties. There is no divinity about the office or duties of a judge that makes him free from criticism. The statute required a misbehavior which causes an obstruction of the administration of justice. It is well settled that

not exist in the same mind at the same time, because they are utterly antagonistic mental qualities. Therefore, since the fact of such bias and prejudice and that it was based upon hearsay is not denied, his sitting in the case was in itself more of an obstruction to justice than any protest thereof could in any wise be. Therefore, the only effect of the leter, the only purpose of the letter was to procure the due and proper administration of justice in behalf of the defendant and to preclude and prevent the personal bias and prejudices of the Judge so developed over a long period of years and admitted by him to exist from intervening itself between the property rights of the defendant and the eternal principles of justice. It cannot be without proof presumed conclusively that the letter was written for the purpose of obstructing the administration of justice, nor can it be conclusively presumed that it did obstruct it. However uncomplimentary of the personality of the Judge it may be, it was not libelous per se nor did it pertain to any matter so far as disqualification of the Judge was concerned then pending or which the defendant ever proposed would be pending before the District Judge.

We submit that (1) No offense is charged against petitioner; (2) No offense is proven against him; (3) No trial has been had; (4) No legal sentence pronounced.

Petitioner is deprived of his liberties without due process of law; fundamental safeguards denied him, and even the right of review emasculated.

WHEREFORE, petitioner respectfully prays that justice may be done; that said decree and sentence of said District Court of the United States sentencing petitioner to thirty days in jail for contempt of Court, and the judgment and opinion of the Honorable Circuit Court of Appeals for the Fifth Circuit affirming same be set aside and reversed, and that judgment be here rendered that said proceeding against petitioner be dismissed or remanded for further proceedings according to the usages and principles of law.

Respectfully submitted,

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